80-540

Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1980

No.

WALTER WARREN BROOKS,

PETITIONER,

versus,

THE SUPREME COURT OF SOUTH CAROLINA.

ON APPEAL FROM THE
SUPREME COURT OF THE
STATE OF SOUTH CAROLINA

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I. Does the action of the Supreme Court of South Carolina requiring Petitioner to proceed to oral argument upon only four days notice and receipt of a brief for the Complainant for which there was no provision for Complainant to submit under the applicable South Carolina Rules, prejudicially presenting issues which the Petitioner had good cause to believe would not be addressed at oral argument deny Petitioner due process of law in violation of the Fourteenth Amendment to the United States Constitution? (Appendix A-1)

II. Are the factual determinations of the South Carolina Supreme Court that the Petitioner participated in the false and fraudulent notorization of an affidavit and financed an attempted illegal narcotics transaction so devoid of support in the record so as to be based on no evidence,

thus denying the Petitioner due process of law in violation of the Fourteenth Amendment to the United States Constitution?

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IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1980

No.

IN THE MATTER OF WALTER WARREN BROOKS,

Appellant

On Appeal From The
Supreme Court of The
State of South Carolina

PETITION FOR CERTIORARI

OPINION BELOW

The pertinent parts of the Panel Report to the South Carolina Bar Board of Commissioners on Grievances and Discipline is reprinted as Appendix A. The recommendation of the South Carolina Bar Executive Committee of the Board of Commissioners on Grievances and Discipline is reprinted as Appendix B. The opinion of the South Carolina Supreme Court is reported at Smith's South Carolina

Advance Sheets No. 18, Opinion No. 21220, dated May 6, 1980 and reprinted as Appendix C.

JURISDICTION

The opinion and order of the Supreme Court of South Carolina were issued May 6, 1980. Timely Petitions for Rehearing were denied June 2, 1980. On September 8, Justice Brennan signed an Order extending the time for filing a Petition for a Writ of Certiorari to and including October 2, 1980.

QUESTIONS PRESENTED

I. Does the action of the Supreme Court of South Carolina requiring petitioner to proceed to oral argument upon only four days notice and receipt of a brief for the Complainant for which there was no provision for Complainant to submit under the applicable South Carolina Rules, prejudicially presenting issues which the Petitioner had good cause to believe would not be addressed at oral argument deny Petitioner due process of law in violation of the Fourteenth Amendment to the United States Constitution? (Appendix A-1)

II. Are the factual determinations of the South Carolina Supreme Court that the Petitioner participated in the false and fraudulent notorization of an affidavit and financed an attempted illegal narcotics transaction so devoid of

support in the record so as to be based on no evidence, thus denying the Petitioner due process of law in violation of the Fourteenth Amendment to the United States Constitution?

STATEMENT OF THE CASE

Introduction

This is a disciplinary action by the Supreme Court of South Carolina against the Petitioner. The Supreme Court of South Carolina found the Petitioner in violation of certain of its Disciplinary Rules and disbarred the Petitioner. The Petitioner seeks review of this decision, contending that the action of the Supreme Court of South Carolina failed in a flagrant and prejudicial way to comport with fundamental notions of notice and fairness in derrogation of Petitioner's rights under the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

STATEMENT OF FACTS

A disciplinary proceeding was

instituted against the Petitioner by a Complaint dated January 20, 1977, alleging twenty-three (23) acts of misconduct. The Petitioner answered, denying all allegations except one (that he had been found guilty of failing to stop a motor vehicle in response to a police cruiser's flashing blue light).

The South Carolina Bar's Board of Commissioners on Grievances and Discipline formed a Hearing Panel to consider the allegations of the Complaint. Hearings were held July 19, 20, 24, and August 28, 29 and 20, 1980. At the conclusion of the hearings, the Petitioner and the Complainant filed written arguments with the panel. The hearing panel filed its report with the Executive Committee of the South Carolina Bar's Board of Commissioners on Grievance and Discipline. The Hearing Panel's majority report found no evidence that Petitioner

committed any of the offenses alleged in the Complaint other than the admitted conviction of the failure to stop charge, and assistance in the preparation of an affidavit said to misrepresent the circumstances surrounding the blue light violation.

The Executive Committee concurred and in its report to the South Carolina Supreme Court, found that Petitioner had twice violated Disciplinary Rule 1-102(A)(5) (conduct that tends to pollute the administration of justice and bring the Courts or legal profession in disrepute). These findings were based on (1) Petitioner's admitted conviction of the failure to stop charge and (2) on the finding that Petitioner had caused to be prepared a false affidavit for the signature of a witness in the blue light case. All other charges were found to

be unsubstantiated, and the Hearing Panel and Executive Committee report recommended they be dismissed. A public reprimand was deemed the appropriate sanction.

Pursuant to the Rules of Disciplinary Procedure (reprinted as Appendix D) the Petitioner filed exceptions (and a supporting brief) to the Hearing Panel and Executive Committee's Report. Petitioner's pleading objected to the findings of violations of the Disciplinary Rules. No mention was made therein of any of the other charges because Petitioner neither considered them live controversies nor was he instructed by the Rules to do so.

Thereafter, on Friday, February 22, 1980, the Complainant filed a so-called "brief" before the Supreme Court of South Carolina. The brief went far beyond answering the exceptions and arguments of Petitioner; it presented thirty-one (31)

exceptions to recommendations of the Executive Committee. It addressed twelve (12) charges that both Grievance Hearing Panel and the Executive Committee found unsubstantiated as well as the charge of the preparation of a false affidavit on which only a dissenter on the Hearing Panel found credible evidence.

Under the applicable Disciplinary Rules of the Supreme Court of South Caroline, there is no provision for the Complainant to file exceptions to the recommendations of the Executive Committee: hence, Petitioner had no notice that he should be prepared to respond to exceptions by the Complainant. The Petitioner filed a timely objection to the filing of the brief on February 22, 1980, and renewed his objection at oral argument. Petitioner also filed a timely Motion for the postponement of oral argument

for a reasonable time to allow him to frame and submit a written response to Complainant's brief. These Motions were denied, and the case was argued four (4) days after the submission of Complainant's brief, on Tuesday, February 26, 1980, the date set originally for argument.

The timing of the brief, submitted at the weekend and a mere four (4) days before scheduled argument, was a calculated move typical of the tactics employed against Petitioner throughout the Grievance proceeding. Coming as a total surprise as no Rule provided for its submission, the brief, by the Complainant, contained thirty-one (31) "exceptions" relating to twelve (12) charges dismissed by the Hearing Panel and Executive Committee for insufficiency of evidence. It is clear that the brief was designed, by its timing as well as by its content, for a single purpose: to overwhelm Petitioner at

the last moment with a mass of spurious charges so he would be prevented from devising or mounting an effective defense.

That the frivilous nature of the charges addressed by the brief was known to Complainant is an inescapable conclusion. Fully half of the exceptions related to allegations of various conspiracies to commit arson, bribery and sundry other offenses on which the Complainant had introduced the testimony of a single witness on each count during the hearing stage. Each and every witness of these counts was an imprisoned convict subject to the coercive power of the state's correctional system, which Complainant did not hesitate to employ to ensure "cooperation". Not one could corroborate his story through the testimony of another or by any other evidence. Yet, Complainant took exception to the

dismissal of these allegations for the transparent purpose of burdening Petitioner with a jumble of issues laid to rest by the Hearing Panel and Executive Committee which properly dismissed them for lack of any credible evidence.

On May 6, 1980, the Supreme Court of South Carolina ordered the Petitioner disbarred, two Justices dissenting. In its decision, the majority found that the Petitioner had engaged in four (4) separate acts of misconduct: the two (2) acts found by the Executive Committee and two (2) other acts which the Executive Committee recommended be dismissed but which were addressed by Complainant in its brief of February 22, 1980. The court stated that a public reprimand would be commensurate with the extent of misconduct found by the Executive Committee, but the additional acts of misconduct found by the Court, especially the

matter of an alleged loan to a client for an aborted drug transaction, necessitated the imposition of the most severe sanction. The minority found that the Petitioner had engaged in the two acts of misconduct found by the Executive Committee and would have imposed only a public reprimand.

REASONS FOR GRANTING THE WRIT

I. THE QUESTION RAISED HEREIN HAS NOT BEEN PREVIOUSLY DETERMINED BY THE SUPREME COURT OF THE UNITED STATES.

Although it is well established that the right to procedural due process requires notice sufficiently in advance of a hearing that will determine the rights and interests of a party, there is a virtual dearth of authority concerning what minimum amount of time is constitutionally sufficient. In most instances, the timing and timeliness of

pleadings is governed by rule and/or statute, so questions concerning the constitutionality of the sufficiency of time may be readily avoided by resting decisions on the non-constitutional ground. This is not the situation here, and thus, the facts of this case present rather starkly the question of minimum timeliness of notice as a matter of due process of law, a question heretofore undecided by the Supreme Court of the United States.

II. THE DECISION BELOW IS NOT IN ACCORD WITH THE PROBABLE OUTCOME IN THE UNITED STATES SUPREME COURT.

The Supreme Court of South Carolina claims for itself the sole authority to determine questions of discipline of attorneys. In re Brooks, Smith's South Carolina Advance Sheets No. 18, Opinion No. 21220, dated May 6, 1980, ___S.C.____ (1980); Burns v. Clayton, 237 S.C. 316, 117 S.E.2d

300 (1960). The recommendations of the Executive Committee and the Hearing Panel are advisory only. Therefore, while the earlier proceedings are definately important, it is the proceeding before the Supreme Court of South Carolina that is determinative, both originally and finally. And it is to a proceeding before that tribunal which timely notice must be given concerning the issues there to be presented and determined. Clearly four days notice over a weekend does not satisfy the demands this Court would probably determine as necessary to satisfy Due Process of Law.

The Supreme Court of California, en banc, held unanamously that the teaching of Goldberg v. Kelly, 397 U.S. 254 (19) and Wheeler v. Montgomery, 397 U.S. 280 (19) must be read to invalidate a three-day notice prior to a hearing following which welfare benefits

could be terminated. McCullough v Terzian, 87 Cal.Rptr. 195, 470 P.2d (1970). In Newton v. Municipal Housing Authority, 72 Misc. 633, 340 N.Y.S.2d 89 (Sup.Ct. Westchester Co. 1973), the court held that a notice of a pre-eviction hearing dated four days prior to the hearing was inadequate to accord with basic notions of procedural due process. Certainly, these interests are no more grave than that of an attorney faced with disbarment. This Court has recognized that disbarment proceedings are quasi-criminal in nature and thus warrant even higher burdens of proof than that required in a civil case. In re Ruffalo, 390 U.S. 544 (1968). If the following views of the teachings of this Court are correct, it appears that the action of the Supreme Court of South Carolina is similarly constitutionally flawed.

The fact that the Petitioner had notice

of the charges placed against him and an opportunity to respond to and defend those charges in the hearing held by the Panel and the review thereof by the Executive Committee should not distract the Court's attention from the fact that the Petitioner was never given adequate notice to respond to the Complainant's exceptions to the report of the Executive Committee before the only tribunal which had any real authority in the case. The Complainant's brief excepted to and argued against certain of the Executive Board's recommendations, citing reasons why the findings should be rejected. The Petitioner, however, was given only four days notice to traverse these arguments. It must be noted, too, that the Rules of Disciplinary Procedure authorized fifteen days for Complainant to file an answer to Petitioner's exceptions and brief, and due process considerations dictate that Petitioner should

be granted at least an equal amount of time to answer new issues raised in exceptions by Complainant, assuming arguendo, that such exceptions were authorized.

Finally, the Petitioner had no prior notice that he should be expected to respond to Complainant's exceptions to the Executive Committee's findings favorable to him. (Appendix A-1). The letter and spirit of the Rules provide no notice that such exceptions will be filed by the Complainant (or accepted by the court if submitted), and prior practice does not incicate that they would be submitted. Thus, Petitioner was forced to proceed to oral argument before the Supreme Court of South Carolina with only four (4) days notice of the issues that were suddenly and without warning presented for the first time.

It is clear that there is a substantial

probability that the absence of timely notice prejudiced Petitioner's case before the Supreme Court of South Carolina. Inability to prepare and respond to Complainant's brief left the State Supreme Court with the cold record and adversary document on only one side of the case. Furthermore, the findings of misconduct by the Court, sua sponte, beyond those recommended by the Executive Committee were the most serious and admitted by the court to be the determining factors in increasing the sanction from public reprimand to disbarment. In a decision as narrowly split as this one, it is highly probable that the existence of Complainant's unanswered arguments turned the case. Thus, on all the facts and circumstances, it is highly probable that this Court would find that the action of the Supreme Court of South

Carolina was not in accord with the teachings of this Court.

III. THE DECISION BELOW IS NOT BASED ON OR SUPPORTED BY ANY OF THE EVIDENCE SUBMITTED IN THE CASE, AND DISBARMENT WITH NO PROOF OF MISCONDUCT IS A DENIAL OF DUE PROCESS OF THE LAW.

A brief review of the Grievance proceeding against Petitioner exemplifies the bizarre nature of the evidence presented against him. Evidence on the charges which were found against him by the Supreme Court of South Carolina differ in no way from the evidence on those charges which were properly dismissed by the Hearing Panel and Executive Committee.

The Grievance action was initiated by a Complaint filed by the State Attorney General's Office as Complainant after Petitioner was convicted of a traffic offense: failure to stop for a police

cruiser's flashing blue light. At trial, a former highway patrolman repudiated a sworn affidavit he had given in connection with the case, and this incident served as the impetus for the grievances filed against Petitioner. The complaint alleged some twenty-three (23) acts of misconduct running the gamut of conspiracies to commit arson, assault and battery, armed robbery, bribery and just about every other offense one might plausibly engage another to commit.

As proof of these various and numerous conspiracies, Complainant offered the uncorroborated testimony of a single witness, all of whom were prisoners subject to the coercive power of the state's penal system which Complainant did not hesitate to employ. Every one of them had much to gain and nothing to lose by testifying for the authorities. Not

one witness could corroborate his story through the testimony of others or through other evidence.

This travesty reached its nadir when one witness, a convict serving time at the State Penitentiary, testified to the panel that he had been promised a 1015 (one thousand fifteen) year reduction in the sentence he faced in exchange for his testimony. Yet, another witness recanted his fabricated allegations on the stand, testifying that he, too, had been promised a substantial reduction in sentence for testifying against Petitioner. These appearances are similar to the testimony dismissed by the Hearing Panel and Executive Board and revived by the Supreme Court of South Carolina as a basis for its conclusion that Petitioner engaged in acts of misconduct.

The only allegation against Petitioner which rested on the testimony of more than

one uncorroborated, imprisoned witness involved the preparation of a false affidavit. This charge rested on the self serving testimony of two witnesses: (1) a former secretary who admitted to three separate instances of forgery, and (2) a former highway patrolman who signed the affidavit, either knowingly putting his name to a misrepresentation at the time or engaging in a misrepresentation by testifying that the same affidavit was false. This allegation was the only charge, other than the charge of failing to stop for the blue light which was admitted, that was found believable by the Hearing Panel and Executive Committee under any standard for the burden of proof.

Finding against Brooks on this single count, the Hearing Panel and Executive Committee recommended a public reprimand. On review, however,

the Supreme Court of South Carolina found other charges - charges rejected by the Grievance panels as supported by no evidence - as established by the "clear and convincing" weight of the evidence. The court below determined that Petitioner assisted in the preparation of the fraudulent affidavit as well as in its preparation by a series of steps which the Grievance Committees characterized as "useless and amateurish," belying Petitioner's sisteen (16) years of practice as a highly competant attorney. The Grievance Hearing Panel and Executive Committee also characterized the sole witness against Petitioner as "unstable," "exhibiting a disturbing capacity to cover up," "capable of distorting the truth to protect herself" and "in fear of prosecution if she did not testify against (Petitioner)". The Grievance Committee Report left no doubt that the secretary herself

was "responsible for the errors" which required fraudulent steps to conceal. This finding was overturned by the Supreme Court of South Carolina which illogically based its conclusion on its recognition of Petitioner's "competitive" nature.

The other, and the most serious charge, found against Petitioner, concerned an alleged aborted drug purchase by a former client. On this charge, rejected by the majority of the Hearing Panel and Executive Committee as supported by no evidence, the court below adopted the view of the lone dissenter among the eight who heard and reviewed the evidence.

Petitioner was accused of loaning Michael Hayden, a former client, money to finance a drug transaction. Hayden was the only witness on this charge. He was a convicted felon, serving sixteen

years on various other drug-related charges, and was subject to extreme pressure to testify. He made three (3) appearances before the panel: the first time refusing to answer any questions; the second time claiming not to remember any transaction whatsoever with Petitioner; and only on the third occasion, after wrangling a promise of immunity and release from incarceration, did he testify. His testimony was directly controverted by John J. Barker, Hayden's employer at the time of the alleged incident, as well as by Petitioner himself.

Hayden had a further transparent motive to testify as he did regardless of the truth of his testimony. He had two applications for Post-Conviction Relief pending in which he alleged inadequacy of counsel in cases defended by Petitioner. Hayden obviously hoped to bolster his own PCR case by accusing Petitioner of a conflict of interest

in undertaking the representations.

Prior to Hayden's third appearance, Petitioner was approached by then counsel for Hayden and told that Hayden would not testify if only Petitioner would sign an affidavit admitting ineffective counsel. Petitioner refused, and Hayden's incriminating testimony followed at his third appearance before the Hearing Panel. It strains credibility to find, as did the lone dissenter on the Panel and the court below, that an attorney of Petitioner's acknowledged ability and expertise in criminal trial practice, would evidence an illegal transaction with a written promissory note.

The Hearing Panel and the Executive Committee found, in light of these circumstances, Hayden's uncorroborated testimony as incredible as that offered on all of the other conspiracy charges. It gained no new credibility on review by the Supreme Court

of South Carolina which arrived at an independent determination that such testimony "clearly and convincingly" evidenced Petitioner's guilt of misconduct, despite its advisory board's determination that such testimony was so incredible as to amount to no proof whatsoever.

CONCLUSION

In Thompson v. City of Louisville, 362 U.S. 199 (1960) this Court held that it is a denial of due process to convict a person of an offense unsupported by any evidence whatsoever. The artitrary and illogical conclusions reached by the court below are not supported by any of the evidence submitted, hence, it constitutes a denial of the right to due process in violation of the Fourteenth Amendment of the Constitution.

Respectfully submitted,

Joseph H. Belser, Jr.,
Attorney for Petitioner

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1980

WALTER WARREN BROOKS,

Petitioner,

-vs-

SUPREME COURT OF SOUTH CAROLINA

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI

Based upon considerations for timeliness of filing, the entire record of the Panel and Executive Committee has not been reprinted herein.

In light of the fact that all reported and transcribed discussions will be presented by way of certified record from the Court below, only so much of the record as is required to show jurisdiction and abuse of process has been reprinted herein.

RULE 15 RULES ON DISCIPLINARY PROCEDURE

STATE OF SOUTH CAROLINA

15. HEARINGS BEFORE THE COURT

A. Upon the filing of a panel report the certification of the record before the Board or Executive Committee, and the Report of the Executive Committee, the Court shall set the matter for a hearing not less than forth days after the issuance of the Order notifying the Respondent that at such time the Court will consider the record and the exceptions thereto.

B. At least twenty days before the date set for the hearing in the Court the Respondent shall file with the Clerk of this Court, the Board, and the Attorney General any exceptions or objections to the Panel Report or the Report of the Executive Committee and the original and ten copies of a brief in support of the exceptions or objections.

C. Within fifteen days after the filing

of Respondent's brief, the Attorney General and any other counsel of record in opposition to the position of the Respondent, shall file with the Clerk of this Court the original and ten copies of such brief or briefs as they may deem necessary in answer thereto, together with proof of service thereof upon Respondent or his counsel of record and upon the Board.

IN THE STATE OF SOUTH CAROLINA

In The Supreme Court

No. 21220

PER CURIAM: This is a disciplinary matter. Respondent Walter W. Brooks was admitted to the Bar of this State in 1966. Since his admission respondent has actively engaged in the practice of law, devoting the vast majority of his time to criminal defense at the trial level.

This proceeding was initiated pursuant to our previous Rule on Disciplinary Procedure[1] by service of a Notice and Complaint on January 20, 1977. The final amended Complaint charged respondent with a garden variety of twenty-one separate acts of misconduct, most of them directly involving

[1]That rule, as amended on June 12, 1975, was rescinded and replaced by our present rule which became effective January 9, 1978.

him in alleged criminal activity. The matter came on for a panel hearing on July 19, 1978, which proceedings continued through August 20, 1978. Three of the twenty-one charges were stricken by the panel, and the remaining eighteen allegations grouped into thirteen categories for purposes of consideration and decision.

All three panel members agreed that seven of the thirteen categories of charges should be dismissed for lack of proof, since the allegations rested on the sole testimony in each instance of one of various convicted felons and drug dealers called to testify against respondent. Other charges were similarly dismissed by the majority of the panel, which ultimately found respondent guilty of two acts of misconduct. The panel members differed in their individual recommenda-

tions of sanction. The overall view unanimously adopted by the Executive Committee of the Board of Commissioners on Grievances and Discipline was that respondent receive a public reprimand. However, one panel member concluded a private reprimand was sufficient to the extent of his individual findings of misconduct; whereas, the panel chairman was of the view that respondent was also guilty of additional acts of misconduct, and recommended he be permanently disbarred.

This Court is not bound to accept the recommendation of the hearing panel adopted by the Executive Committee as set forth in its final report and certified to the Court. The duty of adjudging the professional conduct of members of the Bar and taking appropriate disciplinary action therefor, if warranted, rests exclusively with this Court. See cases collected in West's South

Carolina Digest, Attorney and Client, at Key Number 57. The distinct nature of these proceedings was aptly described in the case of Burns v. Clayton, 237 S.C. 316, 117 S.E.2d 300 (1960):

> The fallacy underlying these contentions is that they overlook the following fundamentals: that this is not a criminal proceeding nor an appeal from the judgement of a lower court; that the Board of Commissioners on Grievances and Discipline are officers of this court, commissioned and charged with the duty of investigating alleged misconduct on the part of their fellow members of the bar of this state and of reporting to this court the proceedings of their inquiry, and their findings and recommendations; that the Board's report is advisory only, this court being in nowise bound to accept its findings of fact or to concur in its recommendations; and upon this court alone rests the duty and grave responsibility of adjudging, from the record, whether or not professional misconduct has been shown, and of taking appropriate disciplinary action thereabout.

117 S.E.2d at 307.

The first act of misconduct which the panel found is evidenced by respondent's conviction in the Court of General Sessions for Richland County for failure to obey a police order to stop in violation of the "blue light law." Section 56-5-750, Code of Laws of South Carolina (1976). Respondent was sentenced to serve three years of pay a fine of $3000.00. This charge is admitted by respondent. The panel and Executive Committee were of the opinion that respondent thereby engaged in conduct prejudicial to the administration of justice in violation of Disciplinary Rule 1-102 (A) (5) of the Code of Professional Responsibility (Rule 32 of the Supreme Court Rules of Practice). We accept the findings of the panel and board and concur in the conclusion of misconduct.

The overall panel report also contained a finding that respondent, in the course of

preparing for trial of the blue light offense, caused to be prepared an affidavit for the signature of one of the police officers involved in the chase and arrest of respondent which knowingly misrepresented the incident. The affidavit was found to contain statements designed to diminish the degree of respondent's culpability with respect to the blue light offense. We have thoroughly examined the record and conclude the evidence sustains the finding of the panel and board in respect to the preparation of the false affidavit, and adjudge this conduct to once again violate Disciplinary Rule 1-102 (A) (5). We are of the further opinion that respondent, by causing this affidavit to be so prepared, has engaged in conduct involving dishonesty, fraud and misrepresentation in violation of Disciplinary Rule 1-102 (A) (4).

The affidavit was typed by respondent's secretary who also obtained the signature of the affiant. The affidavit was then falsely and fradulently notarized by the secretary who signed her sister's name to the notorial certificate. When the fact that the secretary's sister was not a notory came to light, a false application was then prepared in the sister's name and signed by the secretary for her appointment to the office of notary public. The majority of the panel found that respondent's participation was limited to the preparation of the affidavit, and the compounding fradulent acts surrounding its notarization were accomplished by respondent's secretary without his knowledge or assent. We reject this finding.

In arriving at its earlier conclusion that respondent prepared or caused to be prepared the affidavit, the majority panel

noted that the fiercely competitive nature of respondent aided in their conclusion because he would not have remained a detached bystander in his own defense of the blue light charge. We find this to be equally compelling in arriving at our independent conclusion that the acts occurred substantially as the secretary related to the panel, and not as respondent would have us believe. We find, as did the panel chairman, that respondent was advised of the problems with respect to the notarization of the affidavit and had full knowledge of the fradulent actions taken by the secretary. We concur in the minority opinion of the panel chairman with respect to these additional charges which deserve sanction as well. Cf. In the Matter of McGuinn, 272 S.C. 366, 252 S.E.2d 122 (1979) (where an attorney who signed his secretary's name to notorial

certificates on affidavits submitted to the court was publicly reprimanded).

There are numerous charges that link respondent with the illegal trafficking of drugs. We are in agreement with the rec-comendations below that there in not clear and convincing proof of respondent's guilt as to these charges, with the following exception.

Respondent is charged with financing a drug deal for one David Michael Hayden in early 1974. It is undisputed that respondent loaned Hayden $6000.00 on March 13, 1974, and received Hayden's promissory note for $10,000.00 payable on or before April 13, 1974. On April 30, 1974 Hayden repaid either $5,500.00 or $6,000.00 of the indebtedness. It is also undisputed that Hayden was convicted in 1975 of possession with intent to distribute cocaine, and later convicted of conspiracy to distribute cocaine. Respond-

ent represented Hayden in both cases.

Hayden testified the $6,000.00 loan from respondent was to underwrite a marijuana deal expected to reap an eight thousand dollar profit, with respondent's share of the gain being one-half, or $4000.00. Thus, the note was for return of the investment plus the anticipated share of the profits. The deal fell through, and Hayden eventually repaid most, if not all, of respondent's investment.

Respondent's account of this venture was that the money was advanced for a speculative real estate deal involving the purchase of an option on some land in Orangeburg County. Hayden was at that time a salesman for J.J. Barker, a real estate broker.

In accepting respondent's version, the overall panel report rejected Hayden's testimony, finding it incredible that

respondent would finance a drug deal for a person he had little knowledge of, and then evidence the scheme with the promissory note. The panel chairman concluded otherwise, finding it incredible that respondent would have loaned Hayden $6000.00 for a legitimate real estate deal and that Hayden would in turn have signed a $10,000.00 note payable to respondent securing the deal. We agree with the findings of the panel chairman.

Hayden was called to testify before the panel three times, but only on the third occasion after he had received assurances of immunity from both state and federal authorities did he finally reveal his conspiracy with respondent to traffic in marijuana. We are clearly convinced that respondent advanced Hayden the $6000.00 to finance a drug deal. This misconduct standing alone warrents (sic) a severe sanction. In the Matter of Kaylor, 273 S.C.

40, 235 S.E.2d 654 (1979).

While the sanction of a public reprimand may be commensurate with the extent of misconduct found by the majority of the panel and adopted by the Executive Committee, the further acts of misconduct found by the panel chairman and this Court decry the responsibility and trust vested in each member of the Bar of this State upon his or her admission by this Court. The gravity of the misconduct displayed by respondent mandates the sanction of disbarment.

It is therefore ordered that respondent Walter Warren Brook be, and he is hereby, disbarred from the practice of law in this State. He shall immediately surrender to the Clerk of this Court the certificate heretofore issued admitting him to the practice of law.

DISBARRED.

Lewis, C.J., Littlejohn,

Gregory, A.J.

HARWELL, A.J. (dissenting): A majority of the hearing panel recommended a public reprimand and upon review it was the unanimous opinion of the Executive Committee that the appropriate sanction should be a public reprimand.

I have reviewed the record in this matter and although there are numerous charges, I do not feel the complainant has met the burden of proof by clear and convincing evidence. A conviction for failing to stop for a blue light is not such as to warrant disbarment. It is interesting to note that this is respondent's only conviction, although it is alleged in this grievance matter that he was involved in numerous serious violations of the law. Nowhere is it alleged that he has ever been charged or convicted by the Federal or State Govern-

ments with any other criminal act.

I can only conclude that the appropriate law enforcement agencies as well as the hearing panel and the Executive Committee of the Board of Commissioners on Grievances and Discipline also view the testimony presented in this case as less than credible. I would adopt the report of the panel which was concurred in by the Executive Committee and impose a public reprimand as the appropriate sanction.

NESS, A.J., concurs.

REPORT OF PANEL AND EXECUTIVE COMMITTEE OF THE BOARD OF COMMISSIONERS, STATE BAR ASS'N...EXCERPTS PAGES 4-22; 65-72.

II. RUTH CLARKE ALLEGATIONS -- RAY AFFIDAVIT

A. Charges

1. In November of 1975, Respondent prior to his trial (in the Richland County Court of General Sessions for violation of the State's statute on failing to obey an order to stop given by the police), prepared or caused to be prepared a false affidavit for the signature of William R. Ray (paragraph III of the Amended Complaint).

2. The Respondent caused the affidavit mentioned (above) to be falsely notarized by Ruth Clarke, secretary to the Respondent (paragraph IV of the Amended Complaint).

3. The Respondent, upon learning

that Dorothy Strickland was not a notary public, thereafter took steps to have Dorothy Strickland made a notary public, thereby further perpetuating the fraudulent affidavit (paragraph V of Amended Complaint).

B. Undisputed Facts

Ruth Clarke was employed by Respondent as a legal secretary and administrative assistant from late 1974 or early 1975 until May, 1976 (A. 57). Prior to going to work for Respondent, she had been employed as a legal secretary for a number of years by other attorneys in the Columbia area, including a member of the Richland County delegation (A 79, 114). She also had been employed previously by the Columbia Magistrate's office and part-time over a period of nine years by the Columbia Police Department (A. 115). Additionally, Ms. Clarke's husband had been employed by the Columbia Police Department for a number of

years as a sergeant and later as a lieutenant (A. 58).

Respondent was arrested for failure to stop for a blue light on May 24, 1975, by officers W.A. Collins and W.H. Fisher of the Columbia Police Department and Patrolman William N. Ray of the South Carolina Highway Patrol (A. 58-59). Respondent was driving a motorcycle at a high rate of speed when Officers Collins and Fisher commenced pursuit of him in separate vehicles with blue lights and sirens (A. 137). Mr. Ray met Respondent and the two officers, turned around, and joined the pursuit (A. 137). Mr. Ray then passed the two officers and caught up with Respondent (A.137). Respondent pulled over a few seconds before Mr. Ray caught up with him (A. 138).

Respondent retained John K. Grisso, Esquire, to represent him with respect to

the charge, and provided Mr. Grisso with a detailed summary which he had dictated following his arrest (C. 163, 171; D. 328). Mr. Grisso demanded a preliminary hearing, at which time officers Collins and Fisher testified (C. 164; D. 325). Mr. Grisso was of the opinion that there was a substantial conflict between the testimony of the two police officers, and he wanted either to interview Mr. Ray or to obtain an affidavit from him to use in plea negotiations with the Solicitor's office (C. 163-166). He initially tried to contact Mr. Ray on his own, but was unable to locate him (C. 167). He then got the impression that Ms. Clarke knew the patrolman and dealt directly with her concerning the matter (C. 166-168, 177). He did not tell Ms. Clarke what he wanted in the affidavit, but Ms. Clarke told him what Mr. Ray would be able to say (C. 168, 177-178). Finally,

he got to the point where he told Ms. Clarke that "I need either to talk to the man or I need the affidavit and I need it right away or as soon as I can get it because I am negotiating, of course, with the Solicitor's office" (C. 168). Although Mr. Grisso was sure that he said something to Respondent to the effect that he either wanted to talk with Mr. Ray or get an affidavit from him for the purpose of plea-bargaining, he did not recall ever discussing the affidavit itself with Respondent (C. 171, 177-179).

Ms. Clarke had been good friends with Mr. Ray for about five years and had handled a damage claim for him before she went to work for Respondent (A. 59, 81, 140, 177). Sometime in November, 1975, she contacted Mr. Ray and requested him to sign an affidavit setting forth the circumstances surrounding Respondent's

arrest (A. 60-62, 71, 81, 139). Mr. Ray agreed to look at the affidavit and sign it if it was "reasonably correct" (A. 81, 141). Ms. Clarke then typed an affidavit and met with Mr. Ray late one night at the intersection of I-26 and Greystone Boulevard (A. 62, 82, 140). Ms. Clarke was accompanied on this occasion by her nephew's wife, Nancy Shelley (A. 63, 177). Mr. Ray reviewed the affidavit and refused to sign it because it was false, but he did indicate that he would sign it if some changes were made (A. 62-63, 82-83, 85, 141-142). Ms. Clarke then typed another affidavit and met with Mr. Ray a second time late one night at the same location, at which time Mr. Ray signed the affidavit (A. 63-64, 82, 142, Exhibit C-3, Addendum A).

Ms. Clarke carried the affidavit to Respondent's office and signed the name of her sister, Dorothy Strickland, as the

notary public, although her sister had no knowledge of the affidavit and had not given permission for her name to be used (A. 68-69, 75, 85, 122-124, 147). After she signed her sister's name as the notary, Ms. Clarke telephoned her sister and told her what she had done, at which time she learned that her sister was not a notary public (A. 68, 85, 123-124). Ms. Clarke then filled out a notary application for her sister, signed and notarized her sister's name to the application, and forwarded the application to the Richland County delegation for approval (A. 69-70, 75). Ms. Clarke also typed the name of Nancy Shelley as a witness under the notarial seal on the affidavit and signed Nancy Shelley's name as the witness (A. 75). The affidavit is thus unusual in appearance in that it has a witness space and signature under the notarial

certificate (Addendum A).

Respondent took the affidavit to Mr. Grisso's office and gave it to his secretary (D. 329). Mr. Grisso then took the affidavit either to Solicitor James C. Anders or Deputy Solicitor Richard A. Harpootlian and tried to convince them that the charge should be reduced to a traffic court offense (C. 168). Mr. Grisso had no knowledge that there was any question concerning the authenticity or the truthfulness of the affidavit (C. 171-172). However, apparently the affidavit aroused the suspicions of the Solicitor's office because it began on an intensive effort to locate Mr. Ray, who had gotten out of law enforcement and moved from the Columbia area (E. 543, 550-51). The Solicitor's office located Mr. Ray approximately four to six weeks prior to Respondent's trial and learned the circumstances surrounding the

affidavit (E. 544). It was at that point that the importance of the case escalated in the eyes of the Solicitor's office (E. 544).

Respondent's trial commenced on Tuesday, May 18, 1976, and ended late Wednesday, May 19, 1976. Both Respondent's attorney and the Solicitor's office advised the Court that they wanted Ray present (Tr. 2; E. 543).[4] During the trial, Respondent's attorney introduced the affidavit for the purpose of impeaching Ray,

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[4]The Panel denied Complainant's request to admit the entire transcript of the trial on the ground that the same constituted hearsay, but indicated that it would admit all relevant testimony of Respondent (and his attorney) as admissions by a party component (C. 122-132). The parties thereafter agreed on the admissibility of an excerpt of Respondent's testimony (C. 137; Ex. 15). Excerpt as to said excerpt, and the above statement of Respondent's trial counsel, we rule that the remaining portion of Respondent's testimony at trial is irrelevant.

which apparently backfired against him to Respondent's detriment when the circumstances surrounding the solicitation and the execution of the affidavit were brought to the attention of the jury (A. 146; E. 542-543).

Ms. Clarke went to Respondent's home on the evening the trial was over (A. 95; C. 190). She was very upset (A. 96, 128-129; C. 148-153; D. 339-345). She and her husband were already having domestic problems which had led to their separation, and apparently the affidavit had been the subject of a newspaper article which referred to her involvement (A. 107; C. 190; D. 343). Her family would not have anything to do with her and had suggested that she might have to go to the State Hospital (A. 96, 130). Respondent's family made a bedroom available to her (A. 99; C. 152). At some point

after they had gone to sleep, Ms. Clarke's husband came by and woke up the household (A. 99, 152).

Following the trial, Ms. Clarke required hospitalization and psychiatric care for serious emotional problems (A. 103, 131-132; E. 545). She was highly nervous and emotional and would cry and sob hysterically for hours at a time (A. 131-132). She and her husband remained separated, and her own family would not have anything to do with her for over a year (A. 96-100-101). Additionally, she encountered financial difficulties because of her inability to find steady employment (A. 100).

Ms. Clarke also was indicted on three counts of perjury with respect to the affidavit (A. 74-75, 103; E. 5450547).

The Solicitor's office has not decided whether or not to dismiss these charges

(E. 546). According to Deputy Solicitor Harpootlian, the Solicitor's office also intended to bring an indictment against Respondent for assisting in the preparation of the affidavit and forgery of the notarial application, but decided to withhold prosecution of the matter after discussions with the Attorney General's office concerning the instant proceedings (E. 546). Mr. Harpootlian did state, however, that he would like to indict Respondent and bring him to trial on these charges, and that he would dismiss the charges against Ms. Clarke if she testified against him (E. 545-546).

C. Complainant's Evidence

Ms. Clarke testified that sometime after Respondent's arrest, Respondent asked her whether she knew any of the arresting officers (A. 59). She told him that she just knew Officers Collins and Fisher from working at the police department, but that she

and Mr. Ray were friends (A. 59). After Respondent was indicted, he asked her whether she thought any of the officers would be willing to do him a favor by helping him with a statement he needed to give the Solicitor's office (A. 60). She told Respondent that she would be glad to ask, and then contacted Mr. Ray, who agreed to meet with her (A. 60-61, 81). Respondent then dictated the first affidavit to her, which Mr. Ray refused to sign (A. 61-63). The following morning, she reported Mr. Ray's objections to Respondent, and Respondent dictated certain changes to the affidavit (A. 63, 82-83, 87). She and Mr. Ray then met for a second time, and Mr. Ray signed the revised affidavit (A. 63-64, 83).

According to Ms. Clarke, she carried the signed affidavit back to the office and gave it to Respondent (A. 64). She

was going to notarize it herself, but Respondent told her that he preferred someone else notarizing it because he did not believe it would look right for anybody in his office to notarize it (A. 67-68, 85). Ms. Clarke told Respondent that her sister was a notary and that she would sign her name to it (A. 68). She then signed her sister's name as the notary in Respondent's presence and called her sister and told her what she had done, at which time her sister informed her she was not a notary (A. 68, 75, 85). She put her sister on hold and asked Respondent what to do (A. 68). Respondent told her not to worry about it, to let it go like it was because they never check those things (A. 68-69, 88). That same day, at Respondent's direction, she filled out a notary application and signed her sister's name to it in Respondent's presence (A. 69-71, 88; Exhibit C-4). With respect to the addition

of the witness space and Nancy Shelley's name, Ms. Clarke stated at various times that she could not remember whether Respondent directed these additions, that Respondent did not suggest adding the witnesses, and that Respondent told her to fix the affidavit just like it was fixed (A. 75, 86-87).

Mr. Ray testified on behalf of the Complainant and initially characterized the affidavit as "highly inaccurate, about seventy-five percent of it is inaccurate" (A. 148). Upon cross-examination, however, he acknowledged that there were only three inaccuracies in the affidavit: (1) Respondent did not wave at him; (2) After he met Respondent, he saw the blue lights coming about two and a half blocks away rather than three-fourths of a mile, which would be eight to ten blocks; and (3) it was not his opinion that there was

a strong possibility that Respondent did not see the blue lights of the Columbia Police Department (A. 148-174). Mr. Ray also acknowledged that he made Ms. Clarke change the first statement to make it essentially correct, and that he was not trying to lie about anything when he signed the affidavit (A. 166). However, he did not believe the opinion statement at the end of the affidavit was correct when he signed it (A. 67).

Mr. Harpootlian testified that the first time he saw the affidavit was in the early part of 1976 when Respondent discussed it with him in the Solicitor's office at the Courthouse (E. 535-536). Respondent argued that the case should be dismissed because the affidavit showed that Fisher was not telling the truth and was out to get him (E. 537-538). this conversation was corroberated by Assistant Solicitor Steven Giles

Brown, who was present at that time as Mr. Harpootlian's law clerk (E. 548-550). According to Mr. Brown, "Mr. Brooks came in and presented this (the affidavit) to Mr. Harpootlian, showed it to him" (E. 549).

Mr. Harpootlian also testified that he remembered discussing the affidavit with Mr. Grisso, who relied heavily on it in arguing that the case should be dismissed (E. 540, 542). To the best of Mr. Harpootlian's recollection, however, the discussion with Mr. Brooks concerning the affidavit was before any discussion with Mr. Grisso concerning the affidavit, although it could have been after (E. 540).

D. Respondent's Evidence

Respondent testified that he attended the preliminary hearing with Mr. Grisso some six or seven months after his arrest, at which time Officers Collins and Fisher presented different versions

of what had transpired on the night after his arrest (D. 325-326). Following the preliminary hearing, Mr. Grisso indicated to him that he needed to talk with Mr. Ray (D. 326). Shortly thereafter, Respondent answered the telephone at his office early one morning, and it was Mr. Ray calling for Ms. Clarke (D. 326, 365, 375). Mr. Ray told Respondent that he had heard what had happened at the preliminary hearing and wanted to make a statement about it (D. 326, 365, 375). Respondent advised him that he could not have anything to do with that and suggested that he call Mr. Grisso or the Solicitor's office (D. 326-327). Mr. Ray then mentioned Ms. Clarke, and Respondent told him that he could talk to her (D. 327). Respondent later learned that Mr. Ray had found out about the conflict at the preliminary hearing from Ms. Clarke (D. 327).

Respondent acknowledged that he was

aware that Ms. Clarke was trying to get an affidavit from Mr. Ray, and that he may have discussed it with her, but he denied that he dictated the affidavit, assisted in its preparation, or discussed the notarial certificate with Ms. Clarke (D. 328-329, 361-363, 365).[5] According to Respondent, he was very involved at that time with an investigation by the Internal Revenue Service and with his own practice, and he was content to leave the blue light case in the hands of his attorney (D. 330, 363-364, 366). Respondent volunteered (no one else could recall) that one day while he was on his way to see Mr. Grisso's law partner, Ms. Clarke handed him the affidavit in an

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[5]Respondent recalled telling Ms. Clarke something to the effect that statements can be witnessed rather than notarized, but that was in response to a general question and not any particular statement (D. 330).

envelope to give to Mr. Grisso and indicated to him that it was favorable, but he denied that he reviewed its contents (D. 329, 363, 366). Respondent stated that he had an impromptu conversation concerning his case with Mr. Harpootlian at the Solicitor's Office in the Courthouse in February, 1976, during which time Mr. Harpootlian may have mentioned the affidavit, but Respondent denied that he had a copy of the affidavit with him or made any statements about it (D. 560). According to Respondent, he had no knowledge concerning the contents of the affidavit or the circumstances surrounding the execution of the notarial certificate before the blue light trial (D. 328-329, 333-334).

Respondent and Respondent's estranged wife[6] both testified concerning Ms. Clarke's

[6]Mr. and Mrs. Brooks separated in February, 1978, and Mrs. Brooks has filed an action for divorce, a vinculo matrimonii, on the ground of adultry (C. 140).

mental condition following the trial (C. 148-155; D. 339-355). According to them, when she came to their home the evening the trial was over, she repeatedly apologized for what she had done (C. 150; D. 341-342). She said she thought it was the thing to do and did not think it would ever come to this (C. 150; D. 341-342). Thereafter, she telephoned them numerous times, always asking for help and seeking forgiveness for what she had done (C. 156-157).

James W. Cothran, Jr., Esquire, testified that Ms. Clarke worked for him for a period of time after her employment with Respondent (C. 188). He spoke with Mr. Harpootlian concerning the charges against her before he hired her and found out that the Solicitor's office was not interested in her if she cooperated with them (C. 196-198). During the time that

she worked for him, she vascilated a great deal concerning Respondent's involvement with the affidavit; one day she would say he did nothing wrong and the next day she would say he was responsible (C. 190-191). She expressed a great deal of concern over the pressures which were being exerted against her by the Solicitor's office and thought that she was going to have to do whatever was necessary to solve her own problems and avoid prosecution (C. 190-192).

Respondent's explanation for what happened was that he left it to Ms. Clarke to get the affidavit, and that she went overboard in trying to help him (D. 330). According to Respondent, Ms. Clarke must have prepared the affidavit from the detailed summary he dictated to her the morning after the arrest (D. 325-328, 373). In support of his position, Respondent made the following arguments: (1) he has never prepared or

seen an affidavit which is both notarized and witnessed (D. 331); (2) he would not have had to leave the date of his arrest blank and fill it in later because that is a date he will never forget (D. 331-332); (3) the affidavit is typed on a typewriter foreign to his office (D. 332); (4) he had no reason to care who notarized the affidavit, and Ms. Clarke probably had it notarized by someone else because she did not want her husband to know what she had done (D. 368); (5) he would not have participated in the administrative task of preparing an application for a notarial certificate when Ms. Clarke had worked for a member of the Richland County delegation and was infinitely familiar with that procedure (D. 333); (6) as an experienced trial lawyer, he would have realized that such an affidavit could only direct attention to the circumstances

surrounding the execution thereof (D. 334); (7) he would not have insisted that Mr. Ray be at the trial if he had known the circumstances surrounding the affidavit (D. 335; Tr. 2); (8) Ms. Clarke's erratic behavior when the blue light case was called for trial and the serious emotional problems which she occasioned subsequent thereto indicate that she was the guilty party who suffered greatly because of her involvement of her family and her husband's position with the Columbia Police Department (D. 340-351; 371-372); and (9) Ms. Clarke cannot be believed because the Solicitor's office is holding three indictments over her head in exchange for her testimony (D. 345-346; 372).

E. Discussion

The allegation that Respondent caused the preparation of the Ray affidavit is primarily based upon testimony of Ms. Clarke. Although Ms. Clarke is well-acquainted

with legal proceedings, she was the most nervous and combative witness who appeared before the Panel. As discussed above, she has encountered a number of personal problems as a result of her involvement with the affidavit, which obviously have made her a very bitter and unstable person. These strong feelings were manifested in her absolute determination to place the entire blame on Respondent. While Respondent may or may not have caused the affidavit to be prepared, it is clear that Ms. Clarke was at least willing and active participant. The refusal of Ms. Clarke to accept any responsibility for the affidavit makes it very difficult to determine what actually occurred.

The best illustration of Ms. Clarke's attempt to shield herself from any wrongdoing is her testimony, or lack of

testimony, concerning the witness space under the notarial certificate and the signing of the name of Nancy Shelley as a witness. Although Ms. Clarke testified with certainty about Respondent's involvement with the rest of the affidavit, she gave contradictory statements concerning responsibility for the addition of the witness space and the forgery of Mrs. Shelley's signature. Whatever Respondent's connection with the affidavit might have been, the one thing that is clear to us is that Ms. Clarke was responsible for the addition of the witness space and the forgery of Mrs. Shelley's signature. It is inconceivable that an experienced trial attorney like the Respondent would direct the addition of an unnecessary second forgery in an abherrant form which could only bring into question the authenticity of the entire affidavit. The refusal of Ms. Clarke to accept any responsibility for this addition, or to provide

any explanation concerning the same, is indicative of that consistent lack of candor which was present throughout her testimony.

We also find it difficult to believe that Respondent directed the falsified notarial application for Ms. Clarke's sister and was personally present throughout the day and observed everything Ms, Clarke did. The evidence strongly suggests that Ms. Clarke panicked when she discovered that her sister was not a notary and took these useless and amateurish steps to cover up her own mistake.

It is also significant to note that Ms. Clarke never mentioned having any conversation with Mr. Grisso concerning the affidavit. According to Ms. Clarke, all her instructions came from Respondent. Mr. Grisso testified, however, that he was the one who wanted the affidavit, and that

he dealt almost exclusively with Ms. Clarke concerning the same. While Respondent may or may not also have given her instructions concerning the affidavit, it certainly would have made Ms. Clarke's testimony more credible if she had acknowledged some conversation with Mr. Grisso concerning the affidavit.

Not only did Ms. Clarke limit her testimony to the involvement of Respondent, but she also exhibited a disturbing capacity to cover up the involvement of persons other than Respondent. Both Ms. Clarke and her sister insisted that Ms. Clarke filled out the notarial application without any assistance from her sister (A. 88, 125-127). When Ms. Clarke was asked how she acquired the social security number and voting registration number of her sister, she insisted that she knew them by memory (A. 88). Only after considerable cross-examination on this

point did she finally testify as follows:

> Q. If it is her voting certificate number, where would you have gotten it?
>
> A. If it is her voting certificate, I probably could have gotten it from her.
>
> Q. Which would have meant she was cooperating with you?
>
> A. No, she did not cooperate. She might have given me the information, but she didn't like it at all. She did it probably just like I did, as a favor to Mr. Walter Brooks whom I admired at one time.

(A. 91). Obviously, Ms. Clarke's sister had to supply this information. The logical explanation is that either Ms. Clarke assured her sister that what she did was doing alright or that nothing would ever come of it. Ms. Clarke's initial refusal to admit this involvement on the part of her sister, coupled with her sister's steadfast denial that she ever supplied this information, not only

represents an admitted untruth on the part of Ms. Clarke, but suggests an understanding on their part to shield her sister from any involvement with the matter. Any witness who is capable of distorting the truth to protect a loved one is also capable of distorting the truth to protect herself.

Ms. Clarke's attempt to cover up the involvement of her sister points to the even more troublesome question of whether or not her entire testimony is tainted by the effect which her actions have had on her family relationships. By all accounts, Ms. Clarke's husband is a very dedicated and honest police officer, and her active involvement in getting a fellow officer to sign what he considered to be a false affidavit and the publicity which followed contributed to the end of their marriage. Additionally, Ms. Clarke involved her sister and her nephew's wife by forging both of their names to the

affidavit. We do not know the full extent of their reaction. We do know, however, that their feelings were so intense that they would not even let Ms. Clarke see her nephew's child for over a year after the incident. From our own assessment of Ms. Clarke, we think it is very conceivable that she attempted to justify her actions with her family by placing the entire blame on Respondent.

Ms. Clarke also was obviously concerned over the outstanding indictments against her. Mr. Harpootlian candidly acknowledged that he had agreed with the Attorney General's office to hold the criminal action in abeyance until the completion of the instant proceedings, and that he would dismiss the charges against Ms. Clarke if she cooperated against Respondent. While we certainly offer no criticism of the actions of the

Solicitor's office, the testimony of such a nervous and unstable witness certainly would have been more reliable if she did not have the fear of criminal prosecution hanging over her head in the event that she did not testify against Respondent.

Finally, there were two serious contradictions between the testimony of Ms. Clark and other witnesses of Complainant concerning the affidavit. First, Mr. Ray testified that he pointed out the inaccuracies in the first affidavit that had to be changed before he would sign it. (A. 63, 83, 142). This would mean that Ms. Clarke could have made the changes without any assistance from Respondent. Ms. Clarke denied, however, that Mr. Ray made any suggestions to her (A. 83). Secondly, Mr. Ray testified that Ms. Clarke had a woman with her on the first ocassion when he signed the affidavit (A. 148). Ms. Shelley also testified that she went with

Ms. Clarke one time, and that she did not see Mr. Ray sign anything. (A. 177-178). If their testimony is correct, then Ms. Clarke on her own initiative[7] forged the name of a witness who was not even present. Ms. Clarke insisted, however, that Ms. Shelley was with her on both occasions, and that she signed her name because she was not there when she typed the affidavit (A. 63-64, 75).[8]

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[7]As discussed previously, Ms. Clarke initially did not claim that Respondent was responsible for the addition of the witness blank and Shelley forgery (A. 75, 86-87).

[8]As discussed with respect to other allegations of Ms. Clarke, there were additional statements by Ms. Clarke which were at odds with the testimony of other witnesses. For example, Ms. Clarke denied that the otherwise contradicted evidence that the blue light trial came up suddenly on a Monday morning (A. 92-93). She also refused to acknowledge the otherwise uncontradicted testimony and obvious fact that Respondent and Solicitor Anders were not on good terms, although she had worked for Respondent and helped Solicitor Anders in his campaign (A. 102).

We are of the opinion that Ms. Clarke was a willing and active participant in the preparation of the affidavit, and was responsible for the errors in its form and execution. Ms. Clarke was an experienced legal secretary and administrative assistant who was given a great deal of responsibility by Respondent. She had been around law enforcement for years through her husband and through her employment with the Columbia Police Department and the Columbia Magistrate's office, and was familiar with notarial certificates through her work for a member of the Richland County delegation. She had been friends with Mr. Ray for a number of years, and he owed her a favor. Although Ms. Clarke attempted to picture herself as an innocent victim of Respondent's persuasive power, we believe that she knew exactly what was going on and jumped at the opportunity to assist him by securing

the affidavit from Mr. Ray.

Although we are of the opinion that Ms. Clarke was a willing and active participant in the preparation of the affidavit, and was responsible for the errors in its form and execution, we do not believe that she initially created the affidavit. Before preparing the affidavit, Ms. Clarke only could have obtained the details set forth therein either directly from Respondent or from the file summary which he had prepared. However, if, as Respondent suggests, she had obtained the details from the file summary, she would not have left the date of the incident blank because it is clearly set forth on the first line of that summary. While it is unclear whether or not Respondent had anything further to do with the affidavit until after its execution, this factor provides the corroboration necessary for us to con-

clude that Respondent did cause the preparation of the affidavit by dictating its contents (or the contents of the previous affidavit) to Ms. Clarke.

We are also of the opinion that Respondent had knowledge of the affidavit after its execution and relied on it in a discussion of his case with the Solicitor's office. Both Mr. Harpootlian and Mr. Brown testified that Respondent discussed the affidavit with them. Having observed the fiercely competitive nature of Respondent over the six day hearing, we are also of the opinion that Respondent would not have remained a detached bystander in his own case. While Complainant did not charge Respondent with uttering a false affidavit, or otherwise attempting to obstruct justice by its use[9] this later use of the affidavit

[9]Complainant only charged Respondent with causing the affidavit to be prepared and fradulently executed. Although Complain-

fortifies our finding that he intially caused its preparation.

Having determined that Respondent caused the preparation of the affidavit, the question remains as to whether the affidavit was materially false, and Respondent knew of its falsity when he caused its preparation and relied on it in his discussion with the Solicitor's office. Although Mr. Ray testified that his affidavit was false, Ms. Clarke never testified that she told Respondent that Mr. Ray had misgivings concerning its truthfulness. The issue then is not whether

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ant filed a detailed complaint, and amended it during the proceedings to allege additional charges of misconduct, it did move to amend said charge, even though in light of the admitted close cooperation between the Attorney General's office and the Solicitor's office, it would seem that the Complainant had knowledge of the testimony of Mr. Harpootlian and Mr. Brown concerning Respondent's alleged use of the affidavit before the Amended Complaint was filed.

Mr. Ray considered the affidavit false, but whether the facts stated therein were at such variance with what actually occurred that Respondent, as a participant in those events, must have known the affidavit was false when he caused its preparation.

Complainant did not call either Officer Collins or Officer Fisher as a witness, although it would seem that they were in the best position to resolve the issues in dispute.[10] Instead, Complainant chose to rely on the testimony of Mr. Ray who arrived near the end of the chase. As discussed above, Mr. Ray initially characterized the affidavit

[10]As stated supra at n. 5, the Panel re-refused to admit the entire transcript of the trial on the grounds that it constituted hearsay. Complainant provided no explanation for its failure to call the two witnesses who were in a far better position than Mr. Ray to testify as to the distance they were behind Respondent and the point at which they turned on their blue lights.

as being about 75% inaccurate, but upon cross-examination, acknowledge that when given a literal reading, the affidavit is false in only three particulars: (1) Respondent did not wave at him; (2) the blue lights were two and a half rather than eight blocks behind Respondent when he met him; and (3) he was not of the opinion that there was a strong possibility that Respondent did not see the blue lights. If Mr. Ray is correct, it is obvious that such statements were designed to diminish or avoid any charge that Respondent knew he was being chased.

Complainant, by its failure to call the two city police officers who were pursuing Respondent, has failed to provide the Panel with direct evidence of the extent which Respondent actually knew of their pursuit. On this question hangs the issue whether Respondent actually knew the affidavit he prepared was false. The testimony of Mr. Ray

was such as to encourage the conclusion Respondent might well have known the officers were in pursuit. Respondent by his insistence that he had nothing to do with the preparation of the affidavit, and never studied it, compels the conclusion that he considers the affidavit tainted, which provides the corroboration which is so crucial to us. Having concluded that Respondent did in fact participate in its creation, we further find that the affidavit itself misrepresented the incident in question.

F. Findings

1. We find as a fact that in November of 1975, Respondent prior to his trial for violation of the State's statute on failing to obey an order to stop given by the police, caused to prepared (sic) an affidavit for the signature of William R. Ray.

2. We find as a fact that said

affidavit contained statements designed to diminish Respondent's degree of culpability with respect to said charge.

3. We find as a fact that in early 1976, Respondent relied on said affidavit in negotiations with the Solicitor's office.

4. We find as a fact that Complainant has failed to prove by a preponderance of the evidence, much less by clear and convincing evidence, that the Respondent caused the said affidavit to be falsely notarized by Ruth Clarke, secretary to Respondent, by allowing and/or assisting the said Ruth Clarke to sign her sister's name, Dorothy Strickland, as notary public.

5. We find as a fact that Complainant has failed to prove by a preponderance of the evidence, much less by clear and convincing evidence, that Respondent learned that Dorothy Strickland was not a notary public, and thereafter took steps to have

Dorothy Strickland made a notary public.

6. We conclude as a matter of law that by causing said affidavit to be prepared, Respondent engaged in conduct in violation of Disciplinary Rule 1-102 (A) (5), and conduct prejudicial to the administration of justice in violation of Disciplinary Rule 1-102 (A) (5).

7. We conclude as a matter of law that paragraphs IV and V of the Amended Complaint should be dismissed.

X. DAVID MICHAEL HAYDEN ALLEGATIONS

A. Charge

In early 1974, Respondent financed a dryg deal with one Mike Hayden and obtained a promissory note for $10,000.00 from Hayden as evidence of this indebtedness. In April of 1974, Mike Hayden repaid $5,500.00 of this drug money to Respondent (paragraph XIX of the Amended Complaint).

B. Undisputed Facts

Mr Hayden is thirty-one years old and a high school graduate (B. 245). He was convicted on July 18, 1975, of possession with intent to distribute cocaine and resisting arrest, and received a ten year sentence for the distribution charge and a five year sentence on the resisting arrest charge, said sentences to run concurrently (B. 304, 384, 445).

He was later convicted along with James Michael Martin and Patrick Martin of conspiracy to distribute cocaine and possession of an unlawful weapon and recieved five years on the distribution charge and one year on the illegal weapon charge (B. 304, 339-340, 384). Respondent represented him in the first case, and represented all three Defendants in the second case (B. 339, 384). Mr. Hayden has filed Applications for Post-conviction Relief alleging inadequacy of counsel with respect to both convictions, which actions were pending at the time of the hearing herein (B. 304, 353, 436).

Mr. Hayden worked as a real estate salesman for J. J. Barker before his incarceration (B. 445; 458). Respondent and Mr. Barker had been

involved in a number of real estate transactions over the years as partners in Broad River Land ompany, and Mr. Hayden got to know Respondent just briefly when he was in and out of the office (B. 447; E. 458). On March 13, 1974, Respondent loaned Mr. Hayden $6,000.00, evidenced by a Promissory Note payable to him on or before April 13, 1974, in the sum of $10,000.00 (B. 414-415; E. 460-461; Exhibit C-11). Mr. Hayden paid back Respondent either $5,500.00 or $6,000.00 on April 30, 1974 (B. 417; E. 461, 504, 506; Exhibit C-12).

Mr. Hayden was first contacted by Mr. Mitchell on July 28, 1977, while he was incarcerated at Walden Correctional Institute, which is an open facility (B. 426-427). Mr. Mitchell told him that he was aware of his

post-conviction action and wanted to know if he had anything derogatory to say about Respondent (B. 429-430). At that time, Mr. Hayden refused to make any statement concerning Respondent (B. 427). Mr. Mitchell contacted him again on August 9, 1977, at which time he again refused to discuss Respondent (B. 427). he next day he was transferred to Kirkland Correctional Institute, where he found Mr. Mitchell waiting on him at the front gate when he arrived (B. 434). Mr. Mitchell said something similar to, "Well, your world has come down around you know," and that he wanted to talk with him concerning his post-conviction relief case coming up and about Respondent (B. 426-427, 435). Mr. Hayden then talked with him because he had been removed from Walden, but he refused to say anything against Respondent (B. 427, 437).

Mr. Hayden's post conviction relief hearing was originally scheduled for March 20, 1978 (B. 343). On March 18, 1978, Mr. Hayden and his two co-defendants were carried to Solicitor Ander's office, where they met with Solicitor Anders, Deputy Solicitor Harpootlian, Assistant United States Attorney Joel Collins, and Drug Enforcement Agent Sharette (B. 343, 437). At that time, they agreed to co-operate in the investigation of Respondent and gave written statements to Mr. Sharette (B. 345-347, 437). Several days later, their post-conviction relief hearing was continued, and they were released on bond (B. 304, 339, 344-346, 350). Thereafter, their bond was revoked on June 16, 1978 (B. 339, 383, 436).

Mr. Hayden first appeared before the Panel on July 20, 1978, at which

time he refused to answer any questions on the grounds that such answers might tend to incriminate him in violation of the Fifth Amendment to the Constitution of the United States (B. 299-311). Mr. Hayden appeared for a second time before the Panel on the morning of July 24, 1978, at which time he could not recall Respondent ever loaning him any money for the purpose of investing in a drug transaction (B. 383-397). Mr. Hayden appeared for a third time on the afternoon of July 24, 1978, at which time he testified in detail as to the subject charge (B. 410). Following the hearing, he was transferred to Goodman Correctional Institution (E. 532).

C. Complainant's Evidence

Mr. Hayden testified that he had a conversation with Respondent concerning marijuana smuggling in December, 1973,

at a Christmas party at Mr. Barker's home (B. 415, 445). Although Mr. Hayden had no experience in marijuana smuggling and provided Respondent no specifics on how he intended to proceed, Respondent agreed to underwrite such an operation (B. 447, 449-450). As a result of that conversation, Respondent gave him $6,000.00 in cash and by check and Mr. Hayden signed the subject promissory note for $10,000.00, which represented the $6,000.00 plus a $4,000.00 profit for Respondent (B. 414-415; Exhibit C-11). Mr. Hayden cashed the check and flew that same day to Montego Bay, Jamaica, where he gave the money to Karl Hawkins (B. 415, 418, 442). Mr. Hawkins then gave the money to Ozzie Brown, a cab driver in Jamaica, who absconded with the money (B. 415). Mr. Hayden then returned from Jamaica

four days later and advised Respondent what had happened (B. 415, 442). Respondent was very upset and insisted upon receiving all the money (E. 415). Mr. Hawkins finally paid him $5,500.00, and on April 30, 1974, Mr. Hayden left a cashier's check for $5,500.00 with Respondent's secretary (B. 417, Exhibit C-12). Mr. Hayden did not make any further payments, although Respondent kept pushing him for the additional $500.00 on the principal and the $4,000.00 profit (B. 417-418, 423).

D. Respondent's Evidence

According to Respondent, Mr. Hayden was intrigued by the amount of money that he and Mr. Barker had made on their real estate investments, and approached him concerning some land in Orangeburg County that he could get an option on for $6,000.00 (E. 460, 504). Mr. Hayden was

of the opinion that he could sell the option in a very short time for an $8,000.00 profit (E. 461, 504). Respondent agreed to loan him the money, with the understanding that they would split the profit (E. 460). Respondent's procedure with Mr. Barker had been to require him to sign a Promissory Note for the amount of the loan plus one-half of the anticipated profit, and he followed this procedure with Mr. Hayden by having him sign a Promissory Note for $10,000.00 (E. 461, 502, 504, 507-509). Approximately 30 days later, Mr. Hayden reported that the deal had fallen through, and Respondent told him to just pay him back the money he had loaned him (E. 461, 506). Mr. Hayden later left a cashier's check for $5,500.00 and $500.00 cash with his secretary and retrieved the note, option and plat

(E. 461, 504, 506).

Except for one telephone conversation concerning an unrelated matter, the next time Respondent heard from Mr. Hayden was after his arrest for distributing concaine and resisting arrest (E. 461-462). Mr. Hayden paid him a substantial fee to represent him in that matter (E. 462). Mr. Hayden later paid Respondent to represent him on the charge of conspiracy to sell cocaine and possession of an unlawful weapon, and Respondent posted bond on all three defendants (E. 462). When the case was called for trial, Judge Agnew required him to represent all three defendants because he had posted their bonds (E.462-463).

Respondent denied that he ever had any conversation with Mr. Hayden concerning drugs (E. 501). Respondent stated that he attended a Christmas party at

Mr. Barker's home in December, 1972, and a Christmas party given by Mr. Barker at the Sheraton Hotel in December, 1973 (E. 458-459). Respondent did not recall seeing Mr. Hayden on either one of these occasions, although as an employee of Mr. Barker he might well have been there (E. 458-459, 501).

Mr. Barker confirmed Respondent's testimony concerning their real estate dealings (D. 204-205). He also recalled one occasion when he was surprised to see Mr. Hayden in the waiting room at Respondent's office (D. 204-205). He also recalled one occasion when he was surprised to see Mr. Hayden in the waiting room at Respondent's office (D. 206-207). Mr. Hayden later explained to him that he was seeing Respondent about a real estate transaction in Orangeburg County (D. 206-208). Mr. Barker also testified

that he was divorced in 1973, and had his annual employees party at the Sheraton Hotel rather than his home (D. 205).

E. Discussion

The allegation that Respondent financed a drug deal with Mr. Hayden rests exclusively on the uncorroborated testimony of Mr. Hayden. It was obvious to the Panel that Mr. Hayden attempted to use this proceeding to enhance his own position with respect to his Application for Post-conviction Relief. Only upon his third appearance before the Panel, apparently after he was satisfied with the arragnements concerning his own case, did Mr. Hayden suddenly have a remarkable revival of memory which allowed him to testify with respect to the charges against Respondent. As we stated previously,

it is hard to imagine any witness with less credibility than a convicted felon and an admitted drug dealer who has everything to gain and nothing to lose by cooperation with the authorities. The uncorroborated testimony of such a person is patently insufficient to support any allegation of misconduct.

Even if Mr. Hayden had an impeccable background, and had made an excellent appearance before the Panel, we would not accept his uncorroborated testimony to find Respondent guilty of misconduct. In the first place, we could not reject Mr. Barker's testimony that he did not even have a Christmas party at his home in 1973, when Complainant easily could have refuted such testimony if not true.[21]

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[21] A good starting point would have been the estranged wife of Mr. Barker, the other salesmen employed by him and their wives, and the wife of Mr. Hayden.

In the second place, it is highly improbable that a reasonably intelligent person would: (1) finance a drug smuggling operation for a twenty-eight year old real estate salesman with no experience in drug trafficking; (2) hand over $6,000.00 to such a person based upon one conversation at a Christmas party three months earlier in which no details of the proposed operation were discussed; and (3) then evidence the transaction with a Promissory Note. In the third place, we seriously question whether Mr. Hayden ever attempted such an operation. While he stated that he flew to Jamaica on March 13, 1974, and saw Mr. Hawkins give the money to Mr. Brown, he did not supply such elementary details as how he contacted Mr. Hawkins, the financial arrangements he made with Mr. Hawkins, the quantity

of marijuana which he attempted to purchase, the manner in which he flew to Jamaica, the manner in which he intended to smuggle the marijuana back into the country, or his plans for selling and distributing the marijuana after he returned to the country. Either Mr. Hayden never attempted the operation, or he had some reason for not wanting to supply sufficient details for us to decide whether such an attempt was made on the date in question. At the very least, Complainant could have proveded us with documentation to show that Mr. Hayden flew to Jamaica on March 13, 1974, or that he was in Jamaica during that time.

Mr. Hayden also insisted, in direct contradiction with one of the co-defendants, that his release on bond shortly after he gave a statement concerning

Respondent had nothing whatsoever to do with such cooperation (B. 343-350, 437). Based upon our own experiences, we do not believe the Court would have granted bond on an Application for Post-conviction Relief for a man who was serving time for convictions of selling drugs on two seperate occasions unless the State recommended it because of his cooperation. We believe the testimony of the co-defendant that this was the case. The marked difference in candor between Mr. Hayden and his co-defendant is just another indication of the unreliable nature of Mr. Hayden's entire testimony.

F. Findings

1. We find as a fact that on or about March 13, 1974, Respondent loaned Mr. Hayden $6,000.00 for the purpose of purchasing an option on real estate in

Orangeburg County; Mr. Hayden gave Respondent a Promissory Note for $10,000.00 which represented the $6,000.00 loan and the $4,000.00 profit which Mr. Hayden promised Respondent; thereafter, the transaction did not go through, and Mr. Hayden paid back the $6,000.00 to Respondent and Respondent gave him the original Promissory Note.

2. We find as a fact that Complainant has failed to prove by a preponderance of the evidence, much less by clear and convincing evidence, that in early 1974, Respondent financed a drug deal with one Mike Hayden.

3. We conclude as a matter of law that paragraph XIX of the Amended Complaint should be dismissed.

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

IN THE MATTER OF WALTER WARREN BROOKS,

RESPONDENT

OPINION NO. 21220

PETITION FOR REHEARING

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for Complainant

COUNSEL FOR THE RESPONDANT, WALTER WARREN BROOKS, would petition this Honorable Court for a rehearing in the above stated matter based upon the following points which may have been overlooked or misapprehended by the Court:

1. The Court overlooked the fact that nowhere in the Rules on diciplinary procedures is there a provision for the Complainant to submit exceptions to the committees findings, although they are permitted a brief only five days prior to the hearing. Said brief is only as necessary to answer the Respondent's brief (Rule 15-C, Rules of Disciplinary Procedure).

2. That it is inconceivable that an attorney of Mr. Brooks' experience and standing would attempt to falsify a notary after the fact such that it would be

apparent by simply looking at the dates that the said notarization was false.

3. The Court failed to consider that Brooks could not have participated in the preparation of Officer Ray's Affidavit without Ray's help because he could not have been privy to the information in the Affidavit unless Officer Ray had communicated the information about his police background and whereabouts on the day in question to the Respondent. That information is directly contradicted by Officer Ray's testimony (A-139 through 145) when he stated that he had been contacted by Mrs. Clark. Ray further testified (A-175) that he only knew Brooks through his representation of other clients at trial.

4. The Court failed to consider when deciding that a false Affidavit was submitted, that Officer Ray, in his cross-examination (A-166) testified that the

statement was essentially correct.

5. The Court failed to take into consideration the inducement by way of promises of immunity and no prosecution given to Mrs. Clark to make a statement concerning the notarization of the Affidavit in question.

6. The Court failed to consider the long-standing relationship between Mrs. Clark and Officer Ray which would lend credence to the position that Mrs. Clark alone or in concert with Ray caused the Affidavit to be prepared.

7. The Court failed to take into consideration the finding by the panel that the Complainant failed to prove even by a preponderance of the evidence much less by clear and convinding evidence that the Respondent in any manner caused a false Affidavit to be prepared.

8. The Court failed to take into

consideration the finding by the panel that the Complainant failed to prove even by a preponderance of the evidence much less by clear and convincing evidence that the Respondent caused a notary to be falsified.

9. The Court failed to take into consideration the fact that Mrs. Clark's statements concerning the Affidavit and notary in question were totally uncorroborated save by a statement from Ray that the Affidavit was false. Such corroboration was later refuted even by Ray.

10. The Court overlooked the obvious explanation of the Affidavit that at that time Mrs. Clark sincerely wanted to help Mr. Brooks and simply went out of her way to do so which later backfired.

11. The Court failed to consider that Ruth Clark stated that the witness, Nancy Shelly, was with her on both visits to Ray whe, in fact, Nancy Shelly was only there

on one occasion (See both Ray's and Shelly's testimony). Said testimony should have been considered when deciding matters concerning Mrs. Clark's veracity (A-178). Not only was Mrs. Shelly's signature a forgery by Mrs. Clark but that Shelly testified that she did not even see Officer Ray sign any Affidavit.

12. That the Court, unlike the panel which dismissed the charge of fraudulant acts surrounding the notarization of a false Affidavit, was not able to observe the demeanor or the witnesses on the stand and as a result would be unable to make a valid judgement concerning the parties respective veracity.

13. The Court failed to consider that Mrs. Clark not only forged the signature notaries and witnesses on the first statement, but compounded the gravity of

her own offense by forging all of the signatures on the second Affidavit.

14. The Court failed to consider given the totality of the testimony and its impact on the Respondent, the probability that Mrs. Clark was operating at the direction of and in conspiracy with the Solicitor's office in their long-standing and well-document attempts to reid themselves of Mr. Brooks as a criminal defense attorney.

15. That the Court in finding that David Michael Hayden was the recipient of six thousand ($6,000.00) dollars from the Respondent for the purpose of financing a drug deal failed to consider that this was, in fact, Mr. Hayden's third contradictory statement that he might have made.

16. That the Court did not consider that the Respondent had requested Mike Hayden's brother, Chuck Hayden, to be subpoenaed to testify before the panel and

that Respondent's request was refused. Said testimony would have directly contradicted his brother Michael's testimony.

17. That the Court failed to consider the fact that David Michael Hayden had a very strong motive to testify as he did in light of the fact that he was facing at least sixteen consecutive years on sentences for drug convictions and that since that time, based on promises by the Attorney General's office and the Solicitor, he has been on either work release or extended work release and is presently working at Bob Bennet Ford.

18. The Court failed to consider that to one extent or another, every witness against the Respondent concerning the drug related testimony were either convicted felons or under present indict-

ment for drug related charges and were, therefore, subject to extreme pressure, harassment and prejudice by agents either of the Attorney General's office, Solicitor's office or correction officers.

19. That the Court overlooked the testimony of one J.J. Barker which was in direct conflict with Hayden's testimony concerning the event preceeding the loan of six thousand ($6,000.00) dollars. That the real estate deal was a contract to purchase, or an option on the land in Orangeburg County, and the loan and note for the Respondent's share of the profit on the sale of the option was the only method that the Respondent had to protect his investment save an assignment of the actual option on the land, which Mr. Hayden needed to assign to prospective buyers.

20. That the Court did not have the opportunity to observe convicted felon Hay-

den's demeanor on the stand, and, therefore, were not in a position to judge his credibility. The entire transcript of Hayden's testimony shows a marked pattern of evasiveness which would further diminish the witness's credibility.

21. The Court overlooked the basic constitutional precept that an individual has a right not to be convicted or punished, save by finding of guilt based on evidence beyond a reasonable doubt.

22. That the Court's sanction of disbarment amounts to a very severe punishment and an unconstitutional deprivation of the Respondent's right to due process ehn based on a lack of competent evidence.